



## CITY OF LODI

## COUNCIL COMMUNICATION

AGENDA TITLE: Adoption of Ordinance No. 1528 entitled, "An Ordinance of the Lodi City Council Addressing Property Maintenance and the Designation of Certain Kinds of Nuisances"

MEETING DATE: November 6, 1991

PREPARED BY: City Clerk

RECOMMENDED ACTION: Following reading by title, it would be appropriate **for** the City Council to adopt Ordinance No. 1528.

BACKGROUND INFORMATION: Ordinance No. 1528 entitled, "An Ordinance of the Lodi City Council Addressing Property Maintenance and the Designation of Certain Kinds of Nuisances" was introduced at the regular meeting of the Lodi City Council held October 16, 1991.

Pursuant to State statute, ordinances may **be** adopted five days after their introduction following reading by title.

This Ordinance has been approved as to form by the City Attorney.

FUNDING: None required.

*Allice M. Bunchle*  
Allice M. Bunchle  
City Clerk

AMR/jmp

APPROVED: \_\_\_\_\_

THOMAS A. PETERSON

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ORDINANCE NO. 1528

AN ORDINANCE OF THE LODI CITY COUNCIL  
ADDRESSING PROPERTY MAINTENANCE AND THE DESIGNATION  
OF CERTAIN KINDS OF NUISANCES

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BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Chapter 15.30 is hereby added to the Lodi Municipal  
Code to read as follows:

Chapter 15.30

PROPERTY MAINTENANCE AND THE DESIGNATION OF CERTAIN KINDS OF NUISANCES

Sections:

- 15.30.010 "Findings and Intent".
- 15.30.020 Definitions.
- 15.30.030 Nuisances Prohibited.
- 15.30.040 Declaration of Public Nuisance.
- 15.30.050 Abatement Procedure: Notification of Nuisance-
- 15.30.060 Administrative Hearing--Generally .
- 15.30.070 Notice of Hearing.
- 15.30.080 Administrative Hearing--By City Manager or Designee.
- 15.30.090 Nuisance Finding--No Appeal.
- 15.30.100 Appeal Procedure.
- 15.30.110 Appeal Hearing Procedure .
- 15.30.120 Decision by Planning Commission.
- 15.30.130 Service of Order to Abate.

Sections:

- 15.30.140 Filing Appeal of Planning Commission's Decision--Time Limit.
- 15.30.150 Filing Appeal of Planning Commission's Decision to City Council.
- 15.30.160 Abatement **by** City.
- 15.30.170 Demolition Restrictions.
- 15.30.180 Notice of Intent to Demolish.
- 15.30.190 Record of Cost of Abatement.
- 15.30.200 Assessment Lien.
- 15.30.210 Notice of Lien.
- 15.30.220 Violations and Penalties.

15.30.010. "Findings and Intent".

A. The Lodi City Council hereby finds and declares that the regulations in this chapter are necessary in order to:

- (1) control or eliminate conditions which are detrimental to health, safety and welfare;
- (2) preserve the quality of life and alleviate certain socioeconomic problems created by physical deterioration of property; and
- (3) protect property values and further certain aesthetic considerations for the general welfare of all residents of the City of Lodi.

8. This chapter is not intended to repeal, amend or in any way impair other laws or regulations applicable to property in the City of Lodi, as they now **exist** or may later be amended, nor to affect or modify any deed restriction or covenant running with the land which is more restrictive,

15.30.020. Definitions.

(a) "Back yard" shall mean that portion of property between a building and the back property line.

(b) "Building" shall mean any structure used or intended for supporting or sheltering of any use or occupancy of any nature.

(c) "City" shall mean the City of Lodi.

(d) "City Manager" shall mean the City Manager or the City Manager's designee.

(e) "Front yard" shall mean that portion of property between the street and a building.

(f) "Owner" shall mean any person owning property, as shown on the last equalized assessment roll for city taxes and also includes the lessee, tenant or other person having control or possession of the property, unless otherwise specified.

(g) "Person" shall mean any individual, partnership, corporation, association or other organization, however formed.

(h) "Property" shall mean all real property within the City of Lodi including but not limited to front yards, side yards, back yards, driveways, walkways, and sidewalks and shall include any building located upon such property.

(i) "Side yard" shall mean that portion of any property between a building and the side property lines.

15.30.030. Nuisances Prohibited.

It shall be unlawful and an infraction for any person owning, leasing, renting, occupying or having charge or possession of any property within **the** City to maintain or allow to be maintained such property in any such manner that any of the following conditions are found to exist thereon, except as may be allowed by any other provision of law:

A. Accumulations of dirt, litter or debris;

B. Clothes lines or clothes hanging in front yards, or from porches, balconies or windows, provided however, that clothes lines and clothes hanging in rear yards shall be permitted;

C. Accumulations of packing boxes, lumber, salvaged materials, fire wood, or similar materials in the front yard or visible from a public right of way;

D. Attractive nuisances dangerous to children including abandoned, broken, or neglected equipment, machinery, refrigerators and freezers, hazardous or unmaintained pools, ponds, and excavations;

E. Broken, discarded or dilapidated furniture, household equipment, or furnishings, or shopping carts on the exterior of the front or side yards;

F. Overgrown vegetation likely to harbor rats, vermin or other nuisances dangerous to public health, safety, and welfare, or

obstructing a necessary view of drivers on public streets or private driveways;

G. Dead, diseased, decayed or hazardous trees, weeds or other vegetation constituting unsightly appearance, which is either dangerous to public health or safety, or detrimental to neighboring properties or property values;

H. Vehicle parts or other articles of personal property which are abandoned or left in a state of partial construction or repair;

I. Buildings which are abandoned, boarded up, partially destroyed, or left in a state of partial construction for an unreasonable period of time, and buildings which are unpainted or where the paint on the exterior of the building is mostly worn off.

J. Fences in a dilapidated, partially destroyed or deteriorated condition.

#### 15.30.040. Declaration of Public Nuisance.

Any property found to be maintained in violation of the foregoing section is hereby declared to be a public nuisance and shall be abated by rehabilitation, removal, demolition, or repair pursuant to the procedures set forth herein. The procedures for abatement herein shall not be exclusive and shall not in any manner limit or restrict the City from enforcing other City ordinances or regulations or abating public nuisances in any other manner provided by law.

#### 15.30.050 Abatement Procedure: Notification of Nuisance.

Whenever the City Manager determines that any property within the City is being maintained contrary to one or more of the provisions

contained in this chapter, the City Manager shall give written notice ("Notice to Abate") to the owner of the property stating the section(s) being violated. Such notice shall set forth a reasonable time limit, in no event less than seven (7) calendar days, for correcting the violations, and may also set forth suggested methods of correcting the same. This notice shall be served upon the owner in accordance with the provisions of Section 15.30.070 covering service by mail or in person.

**15.30.060. Administrative Hearing -- Generally.**

In the event the owner shall fail, neglect or refuse to comply with the "Notice to Abate", the City Manager shall conduct an administrative hearing to ascertain whether the condition complained of in the notice violates this chapter, and therefore constitutes a public nuisance.

**15.30.070. Notice of Hearing.**

A notice of hearing shall be served upon the owner as defined herein not less than seven (7) calendar days before the time fixed for hearing. Notice of hearing shall be served in person, by first class mail, or by certified mail to the owner's last known address. Service shall be deemed complete at the time notice is personally served or deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder. Notice shall be substantially in the format set forth below:

NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE

This is a notice of hearing before the City Manager (or City Manager's designee) to ascertain whether certain property situated in the City of Lodi known and designated as (street address) \_\_\_\_\_, in said City, and more particularly described as [assessor's parcel number] \_\_\_\_\_ constitutes a public nuisance subject to abatement by the methods suggested or described in this notice. If the condition(s) described in this notice, in whole or in part, are found to constitute a public nuisance as defined in Lodi Municipal Code Section 15.30.030 and are not properly abated by the owner, such nuisance may be abated by municipal authorities, in which case the cost of the abatement will be assessed upon such property and such costs, together with interest thereon, will constitute a lien upon such property until paid. In addition, you may be cited for violation of the provisions of the Lodi Municipal Code and subject to a fine.

Said alleged conditions consist of the following:

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The method(s) of abatement are:

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All persons having an interest in the matters covered by this notice may attend the hearing and their testimony and evidence will be heard and given due consideration.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

\_\_\_\_\_  
City Manager

Date and Time of Hearing \_\_\_\_\_

Location of Hearing \_\_\_\_\_

15.30.080. Administrative Hearing -- By City Manager or Designee.

At the time stated in the notice, the City Manager or City Manager's designee shall hear and consider all relevant evidence, objections or protests relative to such alleged public nuisance and to the proposed method(s) of abatement which may include clean up, rehabilitation, repair, removal or demolition of such property, or such other methods which the City Manager may deem appropriate. The hearing may be continued from time to time.

If the City Manager finds that **such** public nuisance does exist and that there is sufficient cause to abate the nuisance by rehabilitation, demolition, removal or repair, the City Manager shall prepare a Findings and Order which shall specify the nature of the nuisance, the method(s) of abatement and the time within which the **work** shall be commenced **and** completed. The order shall include reference to

the right to appeal set forth in Section 15.30.100 of this chapter. A copy of the Findings and Order shall be served on all owners of the subject property in accordance with the provisions of Section 15.30.070. In addition, a copy of the Findings and Order shall be forthwith conspicuously posted on the property.

15.30.090. Nuisance Finding -- No Appeal,

In the absence of an appeal by owner, the property shall be rehabilitated, repaired, removed, or demolished in the manner and means specifically set forth in the Findings and Order. In the event the owner fails to abate the nuisance as ordered, the City Manager shall cause the nuisance to be abated by City employees or private contract. The costs shall be billed to the owner as specified in Section 15.30.160 of this chapter. The City Manager may authorize City employees or the City's contractors to enter property for such purposes. However, nothing in this section shall be deemed to abrogate the requirement of a warrant for entry into any place where owner would have a reasonable expectation of privacy.

15.30.100. Appeal Procedure.

A. The owner may appeal the City Manager's Findings and Order to the Planning Commission by filing an appeal with the City Clerk within seven (7) calendar days of the date of service of the City Manager's decision. The appeal shall contain:

1. A specific identification of the subject property;
2. The names and addresses of all appellants;

3. A statement of appellant's legal interest in the subject property;

4. A statement in ordinary and concise language of the specific order or action protested and the grounds for appeal, together with all material facts in support thereof;

5. The date and signatures of all appellants; and

6. The verification of at least one (1) appellant as to the truth of the matters stated in the appeal.

B. **As** soon as practicable after receiving the appeal, the City Clerk shall set a date for the Planning Commission to hear the appeal which date shall be not less than seven (7) calendar days nor more than thirty (30) calendar days from the date the appeal was filed. The City Clerk shall give each appellant written notice of the time and the place of the hearing at least five (5) calendar days prior to the date of the hearing, either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal. Continuances of the hearing may be granted by the Planning Commission on request of the owner for good cause shown, or on the Planning Commission's own motion.

15.30.110. Appeal Hearing Procedure.

A. All hearings shall be tape recorded.

B. Hearings need not be conducted according to the technical rules of evidence.

C. Hearsay evidence may **be** used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in

itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

D. Oral evidence shall be taken only on oath or affirmation.

E. Irrelevant and unduly repetitious evidence shall be excluded.

15.30.120. Decision by Planning Commission.

Upon the conclusion of the hearing, the Planning Commission shall determine whether the property or any part thereof, as maintained, constitutes a public nuisance. If the Planning Commission so finds, the Planning Commission shall adopt a "findings and order" declaring such property to be a public nuisance, setting forth its findings and ordering the abatement of the same by having such property rehabilitated, repaired, removed or demolished in the manner and means specifically set forth in the findings and order. The findings and order shall set forth the time within which such work shall be completed by the owner, in no event less than thirty (30) days. The decision and order of the Planning Commission shall be final, unless appealed to the City Council.

15.30.130. Service of Order to Abate.

A copy of the findings and order of the Planning Commission

ordering the abatement of said nuisance shall be served upon the owner(s) of the property in accordance with the provisions of Section 15.30.070. Upon abatement in full by the owner, the proceedings hereunder shall terminate.

15.30.140. Filing Appeal of Planning Commission's Decision--Time Limit.

Any action appealing the Planning Commission's decision and order shall be commenced within ten (10) calendar days of the date of service of the decision.

15.30.150. Filing Appeal of Planning Commission's Decision to City Council.

The owner may appeal the Planning Commission's decision to the City Council by filing an appeal with the City Clerk under the same appeal procedures as set forth in Sections 15.30.100 through 15.30.130 above, except that when appealed to the City Council, the decision of the City Council shall be final.

15.30.160. Abatement by City.

A. If such nuisance is not abated as ordered within the abatement period, the City Manager shall cause the same to be abated by city employees or private contract. The City Manager is expressly authorized to enter upon said property for such purposes. The cost, including incidental expenses, of abating the nuisance shall be billed to the owner and shall become due and payable thirty (30) days thereafter. The term "incidental expenses" means and includes, but is not limited to, personnel costs, both direct and indirect, including

attorney's fees; costs incurred in documenting the nuisance; the actual expenses and costs of the City in the preparation of notices, specifications and contracts, and in inspecting the work; and the costs of printing and mailing required hereunder.

8. A person shall not obstruct, impede, or interfere with the City Manager, or his representative, or with any person who owns, or holds any interest or estate in any property in the performance of any necessary act, preliminary to or incidental, carrying out an abatement order issued pursuant to Sections 15.30.080 and 15.30.120 of this chapter.

15.30.170. Demolition Restrictions.

No property shall be found to be a public nuisance under Section 15.30.030(I) and ordered demolished unless the order is based on competent sworn testimony and **it** is found that in fairness and in justice there is no way other than demolition reasonably to correct such nuisance.

15.30.180. Notice of Intent to Demolish.

A copy of any order requiring abatement by demolition under Section 15.30.080 or 15.30.130 shall be forthwith recorded with the San Joaquin County Recorder.

## LIEN PROCEDURE

### 15.30.190. Record of Cost of Abatement.

The City Manager shall keep an account of the cost, including incidental expenses, of abating such nuisance on each separate lot or parcel of land where the work is done by the City and shall render an itemized report in writing to the City Council showing the cost of abatement, including the rehabilitation, demolition or repair of said property, including any salvage value relating thereto; provided that before the report is submitted to the City Council, a copy of the same shall be posted for at least five (5) days upon or in front of such property, together with a notice of the time when said report shall be heard by the City Council for confirmation. A copy of the report and notice shall be served upon the owners of said property in accordance with the provisions of Section 15.30.070 at least five (5) calendar days prior to submitting the same to the City Council. Proof of the posting and service shall be made **by** affidavit filed with the City Clerk.

### 15.30.200. Assessment Lien.

A. The total cost for abating such nuisance, as **so** confirmed by the City Council, shall constitute a special assessment against the respective lot or parcel of land to which it relates, and upon recordation in the office of the County Recorder of a Notice of Lien, as so made and confirmed, shall constitute a lien on said property for the amount of such assessment.

B. After such confirmation and recordation, a certified ~~copy~~ of the City Council's decision shall be filed with the San Joaquin County

Auditor-Controller on or before August 1st of each year, whereupon it shall be the duty of the Auditor-Controller to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes and thereafter said amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, **and** shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessment.

C. In the alternative, after such recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.

15.30.210. Notice of Lien.

Such notice of lien for recordation shall be in form substantially **as** follows:

NOTICE OF LIEN  
(Claim of City of Lodi)

Pursuant to the authority vested by the provisions of Section \_\_\_\_\_ of City of Lodi Ordinance No. \_\_\_\_\_, the City Manager of the City of Lodi did on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, cause the property hereinafter described to be rehabilitated or the building or structure on the property hereinafter described, to be repaired or demolished in order to abate a public nuisance on said real property; and the City Council of the City of Lodi



did on the \_\_\_\_ day of \_\_\_\_, 19\_\_\_\_, assess the cost of such rehabilitation, repair or demolition upon the real property hereinafter described; and the same has not been paid nor any part thereof; and that said City of Lodi does hereby claim a lien on such rehabilitation, repair, or demolition in the amount of said assessment, to wit: the sum of \$\_\_\_\_; and the same shall be a lien upon said real property until the same has been paid in full and discharged of record.

The real property hereinabove mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Lodi, County of San Joaquin, State of California, and particularly described as follows:

(description)

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
City Manager  
City of Lodi

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15.30.220.    Violations and Penalties.

Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:

1.     A fine, not exceeding \$100, for first violation;

2. A fine, not exceeding \$200, for a second violation of this chapter within 1 year;
3. A fine, not exceeding \$500, for each additional violation of this chapter within 1 year.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage **and** approval.

Approved this 6th day of November 1991



DAVID M. HINCHMAN  
Mayor

Attest:



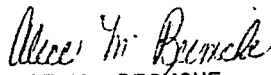
ALICE M. REIMCHE  
City Clerk

State of California  
County of San Joaquin, ss.

I, Alice M. Reimche, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1528 was introduced at a regular meeting of the City Council of the City of Lodi held October 16, 1991 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held November 5, 1991 by the following vote:

Ayes : Council Members - Pennino, Pinkerton, Sieglock and Snider  
Noes : Council Members - Hinchman (Mayor)  
Absent: Council Members - None  
Abstain: Council Members - None

I further certify that Ordinance No. 1528 was approved<sup>d</sup> and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

  
ALICE M. REIMCHE  
City Clerk

Approved as to Form



BOBBY W. McNATT  
City Attorney

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